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UNIVERSITY OF ALASKA BOARD OF
REGENTS AND UNIVERSITY OF
ALASKA SYSTEM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

THERESA DUTCHUK, ANNALISA
HEPPNER, LIZ ORTIZ, JOANNA WELLS,
NORMA JOHNSON, AND JANE DOE VI,

Plaintiffs,

v.

DAVID YESNER, UNIVERSITY OF
ALASKA BOARD OF REGENTS AND
UNIVERSITY OF ALASKA SYSTEM,

Defendants.

Case No. 3:19-cv-00136-HRH

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO
FILE SUR-REPLY IN OPPOSITION TO DEFENDANTS' UNIVERSITY OF
ALASKA BOARD OF REGENTS AND UNIVERSITY OF ALASKA SYSTEM
PARTIAL MOTION TO DISMISS**

On December 20, 2019, Defendants University of Alaska Board of Regents and University of Alaska System (collectively, "the University") moved to dismiss Counts I, II, and III as pertain to Theresa Dutchuk, Joanna Wells, Norma Johnson, and Jane Doe

VI (collectively, “Motion-Plaintiffs”). Docket No. 54 at 2 (Defendants’ Partial Motion to Dismiss).

Plaintiffs filed a response in opposition to the University’s motion. *See* Docket No. 56 (Plaintiffs’ Opposition in Response to Motion to Dismiss). Per L.Civ.R. 7.1(c), the University opted to file a reply memorandum to rebut the factual and legal arguments raised in Plaintiffs’ opposition. *See* Docket 58 (Defendants’ Reply to Plaintiffs’ Response in Opposition).

Plaintiffs now seek to supplement their opposition by moving for leave to file a sur-reply. This motion should be denied because local court rules regarding general motion practice in civil cases do not allow for a sur-reply. The University’s reply and all supporting cases were appropriately limited to rebutting Plaintiffs’ opposition.

I. ARGUMENT

The United States District Court of Alaska has published local rules governing civil cases. *See* L.Civ.R. 1.1, *et seq.* Local Civil Rule 7.1 sets out the rules governing general motion practice, which permits the filing of written motions, oppositions, and optional replies. L.Civ.R. 7.1(a),(c). The rules do not allow for sur-replies.

The rule governing reply memoranda limits them to “rebuttal of factual and legal arguments raised in the opposition.” L.Civ.R. 7.1(c). Thus, the University was free to

address any arguments raised by Plaintiffs in their opposition brief. Plaintiffs raised the discovery rule to oppose the University's statute of limitations arguments. Docket No. 56 at 5. In reply, the University's discovery rule related arguments contradict Plaintiffs' factual and legal assertions. *See* Docket 58 at 4-7. Similarly, Plaintiffs asserted that AS 09.10.065 applies to Jane Doe VI's claims. Docket No. 56 at 5. The University countered with legal authority—which Plaintiffs apparently failed to discover in researching their argument—that directly contradicts Plaintiffs' proposed application of AS 09.10.065 in this case. Docket 58 at 3-4. In fact, all the University's reply arguments were made to rebut factual or legal assertions raised by Plaintiffs in their opposition brief, as directed by L.Civ.R. 7.1(c).

Plaintiffs imply that the University should have been limited to the universe of cases cited in the original motion or their response, but they offer no authority on this point. Further, Plaintiffs fail to address what, if anything, about the new cases would warrant sur-reply.

The University cannot be faulted for supporting its arguments with persuasive legal authority. All cases included in the University's reply brief support either the University's arguments rebutting Plaintiffs' opposition or its original statute of limitations arguments. In fact, most of the new cases in the University's reply are offered

to illustrate the controlling law for *Plaintiffs*' legal assertions, which Plaintiffs failed to include in their opposition briefing.

II. CONCLUSION

For the foregoing reasons, the Court should DENY Plaintiffs' request for leave to file a sur-reply. If the Court grants Plaintiffs' motion, the University moves for leave to file a reply to Plaintiffs' sur-reply.

DATED: February 11, 2020.

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SUR-REPLY

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2020 I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system. Participants in Case No. 3:19-cv-00136-HRH who are registered CM/ECF users will be served by the CM/ECF system.

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